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8 UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT OF CALIFORNIA

10 SAN FRANCISCO DIVISION

11 MICHAEL C. DAVIS,

12 Plaintiff,

13 v.

14 BOSS/MASC,

15 Defendant.

No. C 07-4524 JL

DECLARATION OF DENNIS V. FORD

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MICHAEL C. DAVIS

Plaintiff

vs.

CIVIL ACTION NO. 07-04524

MICHAEL J. ASTRUE
COMMISSIONER OF
SOCIAL SECURITY

Defendant

DECLARATION OF DENNIS V. FORD
COURT CASE PREPARATION AND REVIEW BRANCH 1
OFFICE OF DISABILITY ADJUDICATION AND REVIEW
SOCIAL SECURITY ADMINISTRATION

I, DENNIS V. FORD, Acting Chief of Court Case Preparation and Review Branch 1 of the Office of Appellate Operations, Office of Disability Adjudication and Review, Social Security Administration, declare and state as follows:

(1) Under direct delegation from the Commissioner of Social Security, the Office of Disability Adjudication and Review administers a nationwide hearings and appeals program. The Office of Disability Adjudication and Review includes the Appeals Council and Administrative Law Judges who hold hearings on claims arising under Title XVI of the Social Security Act, as

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amended, when such hearing is duly requested by a claimant who is dissatisfied with the administrative determination of a claim. The Office of Appellate Operations provides professional and technical advice to the Deputy Commissioner and Administrative Appeals Judges of the Appeals Council in the processing of cases in which a civil action has been filed.

(2) One function of the Appeals Council is to act on requests for review of hearing decisions made by Administrative Law Judges and to either grant, deny or dismiss any such request. Under the regulations of the Social Security Administration, if the Appeals Council denies a timely request for review of a hearing decision, that hearing decision becomes the "final decision" within the meaning of, and subject to, the provisions for judicial review in section 205(g) of the Social Security Act, as amended (42 U.S.C. section 405(g)), the first sentence of which reads as follows:

"Any individual, after any final decision of the Commissioner made after a hearing to which he was a party, irrespective of the amount in controversy, may obtain a review of such decision by a civil action commenced within sixty days after the mailing to him of notice of such decision or within such further time as the Commissioner may allow.***"

(3) I am responsible for the processing of claims under Title XVI of the Social Security Act, as amended, whenever a civil action has been filed in the State of California. Information available to me from the electronic computer control system maintained by the Social Security Administration relating to the claim of the plaintiff, MICHAEL C. DAVIS, under

MICHAEL C. DAVIS

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Title XVI of the Social Security Act has been examined under my supervision. To the best of my knowledge and belief such information shows that:

(a) The plaintiff filed an application for Title XVI benefits on November 16, 1999, and was found to be eligible for such benefits. Benefits were paid through a representative payee for months from December 1999 through November 2000. The plaintiff's eligibility was subsequently suspended beginning November 2000 due to his incarceration and terminated after he had been in suspense status for 12 months. The plaintiff was overpaid the benefits for November 2000.

(b) The plaintiff filed a subsequent application for Title XVI benefits on March 19, 2004, and was found eligible for such benefits. The plaintiff is presently receiving Title XVI benefits.

(c) On July 24, 2005, the plaintiff filed a request for reconsideration asserting that funds in the amount of \$880 had been returned to the Social Security Administration in the fall of 2000 by a previous representative payee, and that the plaintiff had not received such funds. By notice dated July 28, 2005, the Social Security field office advised the plaintiff that his request was not timely (Exhibit 1). Thereafter, the plaintiff filed a request for hearing.

(d) On September 27, 2006, an Administrative Law Judge issued an order dismissing the plaintiff's request for hearing. The notice advised the plaintiff that if he disagreed with the order, he might file an appeal with the Appeals Council within 60 days from the date he received the order (Exhibit 2).

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(e) There is no indication that the plaintiff filed an appeal with the Appeals Council.

In accordance with 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

MAR 15 2008
Date


DENNIS V. FORD

EXHIBIT 1

Social Security Administration
Supplemental Security Income
Notice of Reconsideration

SOCIAL SECURITY
2045 ALLSTON WAY
BERKELEY, CA 94704
Claim Number: 188-52-0413
July 28, 2005
JEN

MICHAEL DAVIS
2362 BANCROFT WAY
BERKELEY CA 94704 -1604

Dear MICHAEL DAVIS

Reconsideration Filed:
July 25, 2005

You did not file a reconsideration within 65 days from the date of the decision you are asking us to reconsider. You are asking us to reconsider a decision that was made in 12/2000. You do not have good cause for filing a late reconsideration.

If You Disagree With The Decision

If you disagree with this decision, you have the right to request a hearing. A person who has not seen your case before will look at it. That person is an Administrative Law Judge (ALJ). The ALJ will review your case again and look at any new facts you have before deciding your case.

- You have 60 days to ask for an hearing.
- The 60 days start the day after you receive this letter. We assume you got this letter 5 days after the date on it unless you show us that you did not get it within the 5-day period.
- You must have a good reason if you wait more than 60 days to ask for a hearing.
- You have to ask for a hearing in writing. We will ask you to sign a form HA-501-U5, called "Request for Hearing." Contact one of our offices if you want help.

See Next Page

EXHIBIT

1

188-52-0413

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Please read the enclosed pamphlet, "Your Right to an Administrative Law Judge Hearing and Appeals Council Review of Your Social Security Case." It contains more information about the hearing.

How The Hearing Process Works

The ALJ will mail you a letter at least 20 days before the hearing to tell you its date, time and place. The letter will explain the law in your case and tell you what has to be decided. Since the ALJ will review all the facts in your case, it is important that you give us any new facts as soon as you can.

The hearing is your chance to tell the ALJ why you disagree with the decision in your case. You can give the ALJ new evidence and bring people to testify for you. The ALJ also can require people to bring important papers to your hearing and give facts about your case. You can question these people at your hearing.

It Is Important To Go To The Hearing

It is very important that you go to the hearing. If for any reason you can't go, contact the ALJ as soon as possible before the hearing and explain why. The ALJ will reschedule the hearing if you have a good reason.

If you don't go to the hearing and don't have a good reason for not going, the ALJ may dismiss your request for a hearing.

If You Want Help With Your Appeal

You can have a friend, lawyer, or someone else help you. There are groups that can help you find a lawyer or give you free legal services if you qualify. There are also lawyers who do not charge unless you win your appeal. Your Social Security office has a list of groups that can help you with your appeal.

If you get someone to help you, you should let us know. If you hire someone, we must approve the fee before he or she can collect it.

If You Have Any Questions

We invite you to visit our web site at www.socialsecurity.gov on the Internet to find general information about Social Security. If you have any specific questions, you may call us toll-free at 1-800-772-1213, or call your local office at 510-486-3122. We can answer most questions over the phone. If you are deaf or hard of hearing, you may call our TTY number, 1-800-325-0778. You can also write or visit any Social Security office. The office that serves your area is located at:

SOCIAL SECURITY

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2045 ALLSTON WAY
BERKELEY CA 94704

If you do call or visit an office please have this letter with you. It will help us answer your questions. Also, if you plan to visit an office you may call ahead to make an appointment. This will help us serve you more quickly when you arrive at the office

P. Bittenbender

P. Bittenbender
District Manager

EXHIBIT 2



SOCIAL SECURITY ADMINISTRATION

Refer to: 188-52-0413

Office of Disability Adjudication and Review
Suite 200 N
1301 Clay Street
Oakland, CA 94612

Date: SEP 27 2006

Michael C. Davis
2362 Bancroft Way
Berkeley, CA 94704

NOTICE OF DISMISSAL

I have issued the enclosed order dismissing your request for hearing. Please read this notice and the order carefully.

If You Disagree With The Order of Dismissal

If you do not agree with my order, you may file an appeal requesting the Appeals Council to review and vacate the order.

How To Request Review

To request review you or your representative, if you choose to appoint one, must file a written request that the Appeals Council review the order of dismissal. You may use our Request for Review form, HA-520, or write a letter.

You may file your request at any local Social Security office or a hearing office. You may also mail your request directly to the Appeals Council, Office of Disability Adjudication and Review, 5107 Leesburg Pike, Falls Church, VA 22041-3255. Please put the Social Security number shown above on any request you file.

Time To File

To request review, you must file your request **within 60 days** from the date you get this notice.

The Appeals Council assumes you got the notice 5 days after the date shown above unless you show you did not get it within the 5-day period. The Council will dismiss a late request unless you had a good reason for not filing it on time.

See Next Page

EXHIBIT

2

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Providing Additional Evidence?

You may submit evidence to show why you think I should not have dismissed your request for hearing. You should submit any evidence you wish to Appeals Council to consider with your request for review.

Rules About Review By the Appeals Council

Our regulations state the rules the Appeals Council applies to decide whether to review a case and in reviewing a case. These rules appear in the Code of Federal Regulations, Title 20, Chapter III, Part 416 (Subpart N). The Council may review an order of dismissal for any reason. The Council will review a dismissal for the reasons listed in Part 416.1470 of our regulations.

If My Order Is Not Vacated

If the Appeals Council does not review and vacate my order at your request or on its own motion, and I do not vacate the order, the action upon which you requested a hearing cannot be changed except under special rules.


Your Right To Representation In An Appeal

You may have a lawyer or other person help you in any appeal you file with the Appeals Council. There are groups that can help you find a lawyer or give you free legal services if you qualify. There are also lawyers who do not charge unless you win your appeal. Your local Social Security office has a list of groups that can help you with an appeal.

If you get someone to help with an appeal, you or that person should let the Appeals Council know. If you hire someone, we must approve the fee before he or she can collect it. And if you hire a lawyer, we will withhold up to 25 percent of any past-due insurance benefits to pay towards the fee.

If You Have Any Questions

If you have any questions, you may call, write or visit any Social Security office. If you visit an office, please bring this notice and decision with you. The telephone number of the local office that serves your area is (510)486-3122. Its address is Social Security, 2045 Allston Way, Berkeley, CA 94704.


John J. Flanagan
Administrative Law Judge

SOCIAL SECURITY ADMINISTRATION
Office of Disability Adjudication and Review

ORDER OF DISMISSAL

IN THE CASE OF

CLAIM FOR

Michael C. Davis
(Claimant)

Supplemental Security Income

(Wage Earner)

188-52-0413
(Social Security Number)

An initial determination was made on this claim, but the claimant did not file his request for reconsideration until July 25, 2005.

Since the request for reconsideration was filed late and the Social Security field office found there was no good cause to extend the filing deadline, no reconsidered determination was made on the merits of this case.

The claimant was informed of this in the notice dated July 25, 2005. However, the claimant went on to file his request for hearing on August 8, 2005.

Even though Mr. Davis did this, it does not change the fact that no reconsidered determination has been made on the merits of this case.

The Social Security field office only determined that no reconsidered determination would be made because the claimant's request was untimely.

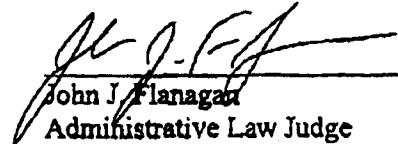
According, I have no jurisdiction to adjudicate this claim.

Section 416.1430(a)(1) of Social Security Administration Regulations No. 16 provides that an individual has a right to a hearing before an Administrative Law Judge if the Social Security Administration has made a reconsidered determination or a revised initial or reconsidered determination on the matter in issue. Section 416.1457(c) of the same regulations provides, as pertinent herein, that an Administrative Law Judge may dismiss a request for hearing if the person requesting the hearing does not have a right to it under section 416.1430.

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Since no reconsidered or revised determination has been made on the merits of this claim; the claimant does not presently have a right to a hearing before an Administrative Law Judge. Accordingly, the claimant's request for hearing is hereby dismissed.


John J. Flanagan
Administrative Law Judge

SEP 27 2008
Date

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee of the Office of the United States Attorney for the Northern District of California and is a person of such age and discretion to be competent to serve papers. The undersigned further certifies that she is causing a copy of the following:

Declaration of Dennis V. Ford with Exhibits 1-2.

to be served this date upon the party in this action by placing a true copy thereof in a sealed envelope, and served as follows:

- ☒ FIRST CLASS MAIL by placing such envelope(s) with postage thereon fully prepaid in the designated area for outgoing U.S. mail in accordance with this office's practice.
- ☐ CERTIFIED MAIL (#) by placing such envelope(s) with postage thereon fully prepaid in the designated area for outgoing U.S. mail in accordance with this office's practice.
- ☐ PERSONAL SERVICE (BY MESSENGER)
- ☐ FEDERAL EXPRESS via Priority Overnight
- ☐ EMAIL
- ☐ FACSIMILE (FAX)

to the party(ies) addressed as follows:

Michael C. Davis, Pro Se
2362 Bancroft Way
Berkeley, CA 94704

Robert Barrer, Esq.
BOSS/MASC
2065 Kittredge Street, Ste. E
Berkeley, CA 94704
PH: 510.649.1930 FX: 510.649.0627
Website: www-selfsufficiency.org

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this March 17, 2008 at San Francisco, California.

/s/
LILY HO-VUONG
Legal Assistant